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CLERK U.S. BANKRUPTCY COURT
Central District of California
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NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

MEHRDAD TAHERIPOUR,

Debtor.

Case No. 2:12-bk-30028-RK

Chapter 7

Adv. No. 2:13-ap-01443-RK

**ORDER DENYING PLAINTIFF'S MOTION
FOR DEFAULT JUDGMENT AGAINST
DEFENDANT LINDA SHETABI**

DAVID GILL, Chapter 7 Trustee,

Plaintiff,

vs.

NEXGEN ENERGY HOLDINGS PCC,
et al.,

Defendants.

Date: October 24, 2017

Time: 2:30 p.m.

Courtroom: 1675

This adversary proceeding came on for hearing on October 24, 2017 before the undersigned United States Bankruptcy Judge on the Motion of Plaintiff David Gill, Chapter 7 Trustee, for Default Judgment against Defendant Linda Shetabi ("Motion")

1 (Docket No. 234). Matthew A. Rips, of the law firm of Russ, August & Kabat, Special
2 Counsel to Plaintiff David A. Gill, Chapter 7 Trustee, appeared for Plaintiff. No other
3 appearances were made.

4 Having considered the Motion, for the reasons stated on the record during the
5 hearing and in the court's tentative ruling for the hearing on the Motion (a copy of the
6 court's tentative ruling is attached hereto), the court denies the Motion without prejudice.

7 IT IS SO ORDERED.

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25 Date: November 2, 2017



Robert Kwan
United States Bankruptcy Judge

TENTATIVE RULING

Revised tentative ruling as of 10/30/17. Deny without prejudice plaintiff's motion for default judgment on his third amended complaint as to defendant Linda Shetabi for insufficient service of process. As indicated by the moving papers, plaintiff served copies of the summons and first amended complaint on this defendant by substituted service by leaving copies at her residence on 3/31/14 and served a copy of the third amended complaint (but without a copy of a summons) by United States mail, first class, on 8/4/14. According to plaintiff, the time for defendant's response to the third amended complaint expired on 8/21/14. Plaintiff requested entry of default on this defendant on 6/6/17, and the clerk of court entered default on 6/12/17.

However, plaintiff's service of process on this defendant is deficient, and thus, the clerk's entry of default was improvident and default judgment should not be granted at this time. Plaintiff's initial service of copies of the summons and first amended complaint on defendant on 3/31/14 was untimely under Federal Rule of Bankruptcy Procedure 7004(e), which then in 2014 required service of the summons and complaint within 14 days of issuance of the summons (i.e., by personal delivery or by mail). Here, the time of service exceeded the allowable 14 day service time period under Rule 7004(f), and service is void. *In re Campbell*, 105 B.R. 19, 21 (9th Cir. BAP 1989). "A default judgment entered when there has been no proper service of the complaint is void, and should be set aside." *Id.*

Because the only service attempt under Federal Rule of Bankruptcy Procedure 7004 (i.e., with summons and complaint) is defective and void, plaintiff's subsequent service of the third amended complaint without a summons by mail under Federal Rule of Bankruptcy Procedure 7005, making Federal Rule of Civil Procedure 5 applicable, is also defective and void.

Also, because plaintiff amended his complaint after service of the first amended complaint to add different and new factual allegations against defendant and revised the claims against her, he was asserting new claims against her without her appearing in the adversary proceeding, which situation is governed by Federal Rule of Bankruptcy Procedure 7005, making Federal Rule of Civil Procedure 5(a)(2) applicable, that is, if the responding party fails to appear and the pleading party files a new pleading asserting a new claim for relief against that party, then that party must be served with copies of the summons and complaint pursuant to Federal Rule of Bankruptcy Procedure 7004, making Federal Rule of Civil Procedure 4 applicable.

Because plaintiff has not properly served defendant, the court should deny the motion for default judgment. However, denial of the motion will be without prejudice and with leave to plaintiff to effect proper service pursuant to Federal Rule of Bankruptcy Procedure 7004 (i.e., service of the third amended complaint with a new alias summons timely served within the current time limit of 7 days of issuance of the summons under Rule 7004(e)).

END OF TENTATIVE RULING